

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

- - - - -X  
UNITED STATES OF AMERICA, : 21-cr-00121(JJM)  
:  
:  
vs. : United States Courthouse  
:  
:  
:  
:  
JOHN DANIEL MACINTYRE, : Thursday, October 6, 2022  
Defendant. :  
:  
- - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING  
BEFORE THE HONORABLE JOHN J. MCCONNELL, JR.  
UNITED STATES CHIEF DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Government: JOHN P. McADAMS, AUSA  
U.S. Attorney's Office  
50 Kennedy Plaza  
Providence, RI 02903  
  
For the Defendant: REBECCA L. AITCHISON, AFPD  
FEDERAL DEFENDER'S OFFICE  
10 Weybosset Street, Suite 300  
Providence, Rhode Island 02903

Court Reporter: Lisa Schwam, CRR-RPR-RMR  
One Exchange Terrace  
Providence, RI 02903

1 (VIA VIDEO CONFERENCE)

2 06 OCTOBER 2022

3 (Time noted; 2:15 p.m.)

4 THE COURT: Good afternoon, everyone. We're  
5 here for sentencing in the case of the United States  
6 vs. John Daniel Macintyre, criminal action 21-121.

7 Would counsel identify themselves for the  
8 record.

9 MR. McADAMS: Good afternoon, your Honor. John  
10 McAdams on behalf of the United States.

11 THE COURT: Good afternoon, Mr. McAdams.

12 MS. AITCHISON: Good afternoon, your Honor.  
13 Rebecca Aitchison on behalf of John Macintyre.

14 THE COURT: Good afternoon, Ms. Aitchison.  
15 Good afternoon, Mr. Macintyre.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: Mr. Macintyre, we're conducting this  
18 hearing remotely due to the emergency finding by the  
19 government that a national emergency due to the  
20 pandemic exists and that at times it's not safe for the  
21 parties to meet in person. I understand after talking  
22 with your attorney that you agree to waive any right to  
23 appear in person for your sentencing and you consent to  
24 us proceeding remotely; is that true?

25 THE DEFENDANT: Yes, I do, your Honor.

1 THE COURT: I actually also understand you  
2 prefer it that way; that's probably the case.

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. The probation department, Mr.  
5 Macintyre, issued a presentence report in your case.

6 Did you get a copy of that report?

7 THE DEFENDANT: Yes, I did, your Honor.

8 THE COURT: And did you have a chance to review  
9 that with your lawyer?

10 THE DEFENDANT: Yes, I was able to.

11 THE COURT: Okay. And did she answer all of  
12 your questions about that?

13 THE DEFENDANT: Yes, she did.

14 THE COURT: Okay. Great.

15 So how we're going to proceed, I'm going to  
16 review the guideline range which is contained in the  
17 PSR. I'll see if there's any objections to it. If  
18 not, then Mr. McAdams will present an argument on  
19 behalf of the government. Your lawyer will then make  
20 her argument on your behalf. You'll then be allowed to  
21 speak if you want to or not, it's up to you, and then  
22 I'll get on with the business of the sentence, okay?

23 THE DEFENDANT: Understood.

24 THE COURT: So the guidelines are calculated as  
25 follows. Base offense level here is 18. There's two

1 points added for the use of a computer. There's four  
2 points added because the 305 images fall between 300  
3 and 600 images, which gives an adjusted offense level  
4 of 24. There's a two-point reduction for acceptance of  
5 responsibility.

6 And does the government wish to make a motion on  
7 the third point?

8 MR. McADAMS: Yes, your Honor.

9 THE COURT: Okay. That will be granted. For a  
10 total offense level of 21.

11 Mr. Macintyre has no criminal history,  
12 therefore, no criminal history points. So a total  
13 offense of 21, Criminal History Category I, brings with  
14 it a recommended period of incarceration of 37 to 46  
15 months.

16 Any objection, Mr. McAdams?

17 MR. McADAMS: No, your Honor.

18 THE COURT: Ms. Aitchison?

19 MS. AITCHISON: No objection, your Honor.

20 THE COURT: Great. Thanks. Mr. McAdams.

21 MR. McADAMS: Thank you, your Honor. Your  
22 Honor, I submitted a written sentencing memorandum  
23 which I'm sure you've reviewed and also obviously the  
24 defense did as well. I won't repeat everything that I  
25 wrote in writing.

1 I've appeared before your Honor in many cases  
2 involving this type of offense, and one of the things  
3 that I try to say each time is that although there are  
4 no victims who are giving victim impact statements in  
5 court today or have submitted them, that is not because  
6 there are no victims in this case. In fact, there are  
7 at least hundreds of victims and possibly thousands  
8 based on the statements of the defendant himself.  
9 They're not here to make a plea to the Court, and so  
10 part of my argument is to try to do that, to try to  
11 have a voice for them in this proceeding.

12 As I indicated in my memorandum, this is a very  
13 serious crime; it's a crime of violence against the  
14 victims that are in these images and videos. This  
15 defendant, by his own admission, has been committing  
16 this crime on a near-weekly basis multiple times for  
17 approximately 15 years. So I think that that's  
18 significantly more than we see in most child  
19 pornography cases. It also, I think, understates his  
20 criminal history. He's never been convicted of any  
21 offense of any kind; this is his first criminal  
22 conviction.

23 I think that in light of the nature of the crime  
24 and the duration of the crime, that this defendant  
25 ought to be sentenced to a sentence of imprisonment.

1 My recommendation is a sentence of 42 months, which is  
2 approximately midway through the advisory guideline  
3 range in this particular case. It's also consistent  
4 with the sentences imposed in quite a few, not every,  
5 but quite a few of the recent cases in which defendants  
6 have been convicted of this offense. The defendant  
7 could have been charged with an offense carrying a  
8 five-year mandatory minimum. He was not in this  
9 particular case, which is also how most of those other  
10 defendants were similarly treated who achieve those  
11 types of offenses. And I listed a half a dozen,  
12 approximately, in my sentencing memo; some of whom were  
13 sentenced by your Honor and others who were sentenced  
14 by others in this district.

15 THE COURT: Mr. McAdams, help me with this. How  
16 is that comparison fair in light of what my charge is,  
17 which is to look at each case individually? And I  
18 understand I have to be concerned about disparate  
19 sentences but, you know, I looked up Mr. Mulvey just  
20 quickly, and his criminal history was extensive,  
21 including a domestic violence charge post charged in  
22 this case. And obviously, you know, you can say what  
23 you want, but we have a very different picture of the  
24 person that stands before us here. So I get really  
25 concerned with just blindly looking at sentences and

1       trying to make anything of it.

2               MR. McADAMS: Well, I don't think you should  
3       look at them blindly, but your obligations do include  
4       avoiding unwarranted sentencing disparities, and  
5       obviously "unwarranted" being the operative word there.  
6       So yes, I would agree with you; Mr. Mulvey can be  
7       distinguished from this defendant based on his criminal  
8       history which was non-child sexual exploitation type  
9       criminal history. As you mentioned, it was domestic  
10      and there were some alcohol-related incidents as well.

11              This defendant has been committing this crime  
12      every week for 15 years. I think that that is  
13      significant, and it isn't to be brushed away by the  
14      mere fact that he's now been caught for the first time.  
15      So I think that when you -- I've been doing a lot of  
16      these cases for about ten years now. And as you know,  
17      there are sort of a spectrum of defendants. And we've  
18      seen some really horrific cases involving hands-on  
19      conduct, and those defendants where we can establish  
20      hands-on conduct are sort of in a different category.

21              And then we've got defendants who are attempting  
22      to engage -- the evidence supports, are attempting to  
23      engage in hands-on conduct that maybe is intervened  
24      with by law enforcement. And then there are defendants  
25      whom the evidence that's provable shows that they are

1 engaged in viewing or receiving or distributing child  
2 pornography or some combination thereof.

3 THE COURT: I agree with those three, Mr.  
4 McAdams, but don't you have to take the third category  
5 and separate those out as well because within that  
6 child-pornography-only case, you have folks that are  
7 actively engaged in distribution -- well, first of all,  
8 you have manufacturers, but I throw them up with the  
9 hands-on. Then you have people that are actively  
10 engaged in distribution, and then you have -- and where  
11 there's concern about possible hands-on in the past.  
12 And then you have people that are, for lack of "only"  
13 term, viewed as only.

14 And what's surprising about this case that I'm  
15 curious about, because I know the other cases that I  
16 did, every one of them had a distribution charge in  
17 them that in plea bargaining the Court -- sorry, the  
18 U.S. Attorney's Office, you know, would negotiate away,  
19 for valid reason, you know, as part of the process, but  
20 this one didn't. And I'm curious if I should consider  
21 the fact that there was never a distribution charge  
22 here to represent a lower culpability, if that makes  
23 sense.

24 MR. McADAMS: So I guess I would say two things.  
25 I don't know that it's the case that all of those



1 involved with a distribution charge because the statute  
2 that criminalizes distribution and criminalizes receipt  
3 is the same statute.

4 THE COURT: Distribution or receipt, either one.

5 MR. McADAMS: Correct, correct.

6 So that statute is the statute that carries the  
7 five-year mandatory minimum. And I think that the  
8 evidence supports, it's undeniable, essentially, that  
9 this defendant also engaged in that type of behavior.  
10 He received, by his own admission, hundreds of  
11 thousands -- excuse me, hundreds or thousands of child  
12 pornography images through the Tor browser that he  
13 downloaded onto his computer and going back even ten  
14 years ago back through LimeWire which was a  
15 peer-to-peer file-sharing system which back at that  
16 time period in 2010, the case law was that if you had  
17 that software on your computer, that was evidence that  
18 you were distributing, because whatever you were  
19 putting in your election was available to anyone else  
20 who wanted to come along. The case law changed over  
21 time about that particular fact, but going back then,  
22 that's how it would have been.

23 So I think this defendant fits with the types of  
24 defendants that we have seen consistently that we don't  
25 have evidence of any type of hands-on offense, but we

1 see them viewing child pornography and downloading  
2 child pornography on their computers. And what we've  
3 done pretty consistently is distinguish those  
4 defendants by if they have any position of trust in the  
5 community that we are particularly concerned about,  
6 such as a member of the clergy, a teacher, a coach, et  
7 cetera, those people we will insist on that five-year  
8 mandatory minimum for receipt. And the people that  
9 don't fall into that category, and I've done a number  
10 of these with Ms. Aitchison, where we agree to some  
11 other range that's below that five years. And that's  
12 typically we either do it as a binding plea or a  
13 binding recommendation or a joint recommendation,  
14 there's been kind of some ebb and flow in how that's  
15 played out.

16 In this particular case, I didn't negotiate. I  
17 don't know exactly what the rationale was that I think  
18 it was a quick agreement between Ms. Aitchison and  
19 Mr. Gendron that he would plead to an information  
20 shortly after he was charged on the complaint and  
21 that's what led to him sort of pleading straight to the  
22 information rather than being required to forgo that.  
23 I mean, he's not -- there is no plea agreement so he's  
24 not protected from that five-year charge. Now, I mean,  
25 we're good-faith operators -- I'm not going to go and

1 do that -- but I don't know exactly why they wouldn't  
2 have wanted to do that to protect him and then, you  
3 know, in our view.

4 So the way I look at it is how does he compare  
5 to defendants that we've been handling this way going  
6 back roughly as long as I've been doing these types of  
7 cases, which is the early 2010s, the beginning of  
8 the -- you know, around -- I think I started doing PSC  
9 cases in 2013. The sort of threshold year in my mind  
10 is 2016 when I started doing a lot of these cases with  
11 others in the office and we really made a concerted  
12 effort to be consistent internally in how we were  
13 handling similarly situated defendants.

14 And it's not easy; you know this, your Honor,  
15 because every case is a little different and every  
16 defendant is a little different. But at some level you  
17 have to create some form of consistency. And that's  
18 where ranges are appropriate, right? And so I don't  
19 think in looking at this case that this particular  
20 defendant has anything crying out to me that separates  
21 him from, you know, the dozen or more, two dozen or  
22 more, defendants that have been sentenced for  
23 possession of child pornography in this district in the  
24 last eight to ten years.

25 THE COURT: Did you not read the licensed social

1 worker report that --

2 MR. McADAMS: I did read it, your Honor.

3 THE COURT: I've never seen that before.

4 MR. McADAMS: I've seen it. Ms. Aitchison has  
5 submitted several to me over the years, frequently  
6 authored by the same social worker, Mr. Keating. I've  
7 yet to see one in which he didn't come to the exact  
8 same conclusion.

9 THE COURT: I guess when he doesn't, they don't  
10 send them to you.

11 MR. McADAMS: That's what I suspect as well.  
12 But, I mean, I have some issues with this.

13 A couple of years ago, your Honor, I had a trial  
14 in front of Judge Smith. And in that trial, the heart  
15 of the defense was that the defendant had engaged in  
16 fantasy and they called as an expert witness Dr. Barry  
17 Wall, a highly respected psychiatrist, a medical  
18 doctor. He testified at length at that trial, and I  
19 cross-examined him at length at that trial, about all  
20 these same tests that were given by Mr. Keating in this  
21 particular case.

22 And while we haven't been provided with any of  
23 the questions or answers that were given by Mr. Keating  
24 to Mr. Macintyre, in that case we were. And what you  
25 see is, and what Dr. Wall acknowledged on the stand, is

1       that those tests are very heavily driven by what the  
2       defendant volunteers. And they are actually possible  
3       to be manipulated. And much of what is done -- because  
4       the people that are giving these tests, whether a  
5       psychiatrist or a social worker, they're not criminal  
6       investigators. They don't look at this from the  
7       perspective of trying to drill down forensically to the  
8       truth in a legal/criminal sense of what actually  
9       occurred; they're treating these people.

10               So Mr. Keating is trying to provide some options  
11       to Ms. Aitchison, and also they're looking at these  
12       individuals as a patient. And so they take at face  
13       value many of the statements that are made because  
14       that's what doctors are trained to do.

15               And to me when you look at Mr. Keating's report,  
16       you see a number of things. First of all, on its face,  
17       it says that the defendant is sexually attracted to  
18       both males and females between the ages of 6 and 13.

19               THE COURT: It's more than just 6 to 13; it's  
20       also adult males and female adults.

21               MR. McADAMS: Correct.

22               THE COURT: I've never seen a report, Mr.  
23       McAdams, to be honest with you, that has the breadth of  
24       sexual interest that I saw listed in this report. I've  
25       never seen that before.

1 MR. McADAMS: The exact same results were in  
2 Mr. Hammond, who was the defendant in that particular  
3 case. He was, according to the results, sexually  
4 attracted to every age, every gender, every race, every  
5 ethnicity. And you know, what's interesting to me  
6 about this is this is a psychosexual report and there's  
7 no discussion really of how any of these sexual  
8 interests correlate to his risk. I mean, the  
9 conclusion is he's at a near -- I think the exact  
10 phrase is a very low risk, extremely low risk, to  
11 commit a future offense. But there's no real  
12 discussion of why that would be. It's contrary,  
13 frankly, to our anecdotal knowledge of defendants in  
14 this district that have been convicted of this offense  
15 and it doesn't make sense.

16 If an individual has, as Mr. Keating says here,  
17 sexual interest in children -- okay, other ages as  
18 well, but clearly according to the -- sexual interest  
19 in children as young as 6 years old, and on page 5 I  
20 believe it says sexuality may be a major problem for  
21 this young man; he harbors serious reservations as well  
22 as a measure of confusion or discontent in relation to  
23 his impulses and the roles he's expected to assume and  
24 yet how does that correlate?

25 If somebody has a sexual interest in children

1 and serious problems with sexual confusion and serious  
2 problems with impulse control, how does that correlate  
3 to then be an extremely low risk to re-offend?  
4 Logically, it just doesn't follow. And there is no  
5 real discussion about it.

6 THE COURT: Mr. McAdams, I mean, look, I'm not a  
7 doctor, you're not a doctor; we just play one on TV,  
8 right, in situations like this. And I don't mean to go  
9 back and forth because it's kind of the same argument  
10 all along, but for someone that's like that -- and  
11 you're right, we see similar things in a whole lot of  
12 these cases -- the question then becomes, is there any  
13 difference in outcome between someone who goes to jail  
14 for, as you're recommending here, four years, and those  
15 that didn't? I mean, there's no cure for this  
16 predilection, right; we all accept that. We know that  
17 there's treatment to mitigate it and there's treatment  
18 to keep it in check, and there's treatment to deal with  
19 it, but to somehow say that punishment is a way to  
20 change someone's behavior given the situation, it  
21 isn't.

22 Punishment for the purpose of punishment, which  
23 3553 requires us to do, makes perfect sense to me.  
24 Hold on just one second. Let me get it out and then we  
25 can. But I don't now, nor do I ever, buy the argument

1 in these cases that jail time checks off the box of  
2 deterrence because science tells us otherwise. And  
3 there are no statistics that tell us that a jail term  
4 causes less recidivism in this area. I've looked for  
5 it; it doesn't exist.

6 So the better argument I think -- I don't mean  
7 to give you the argument -- from my receptive point of  
8 view, this kind of conduct deserves to be punished for  
9 punishment sake because it's so bad and so evil and so,  
10 you know, what you want. But I just have a really hard  
11 time arguing that punishment has any -- that jail has  
12 any sort of deterrence or curative effect.

13 MR. McADAMS: Well, my response to that,  
14 respectfully, Judge, is that obviously I respect your  
15 opinion on that and where you're coming from on that  
16 and at the end of the day it's your interpretation  
17 that's going to drive what sentence you give, but both  
18 the Supreme Court and Congress disagree with the  
19 assessment that you just made.

20 THE COURT: Not the first time.

21 MR. McADAMS: Right. No, and it probably won't  
22 be the last. We all are entitled to have our own  
23 opinions. But, you know, the Supreme Court has said  
24 that the logic of deterrence is a primary driver and  
25 should be a primary driver in sentences in child



1 pornography cases and oftentimes citing Congress's  
2 specific findings and specific statements that they  
3 believe that punishment of individuals who possess  
4 child pornography materials will affect the  
5 dissemination of this material and will drive down  
6 deterrence.

7 Now, obviously, if you don't want to accept it,  
8 you don't have to accept it, but that's the argument  
9 and it's not John McAdams, it's those authorities. And  
10 I've cited a bunch of cases, and you've seen them and  
11 read them and I know you have.

12 The second piece is, what you just urged me to  
13 argue, would be the next argument I was going to make  
14 anyway, which is that this person -- and he is a person  
15 and I don't mean to -- I don't lack empathy or caring  
16 for this person -- he has committed this offense nearly  
17 two to three times a week for 15 years. So even if you  
18 don't believe sentencing him to prison will stop him  
19 from doing it again, he ought to be held accountable  
20 for the behavior that he's already engaged in. And  
21 even if you accept all of the conclusions and  
22 recommendations that Mr. Keating has laid out in his  
23 report, I don't think those still rise to the level of  
24 giving this defendant a complete pass on a prison  
25 sentence.

1           And then the last thing I would say is, again,  
2           just circling back to the beginning, it's important for  
3           the victims of these cases that people like Mr.  
4           Macintyre, who have undeniably fueled the demand for  
5           their abuse by engaging in this behavior -- he's not  
6           one of these people who came across this, he's been  
7           deeply involved and going after this type of material  
8           for well over a decade, half his life or close to it.  
9           And he's got a college education, you know. He  
10          admitted in his own interview, he understood this was  
11          wrong. He may have an addiction, he may have a  
12          sexuality problem that can't be solved, but I don't  
13          think telling him not to do it again addresses the  
14          needs under 3553.

15          And then I guess I did promise it would be my  
16          last point. One last point, which is the following. I  
17          don't think we do defendants like Mr. Macintyre any  
18          service when we impose a straight probationary sentence  
19          on them knowing that if he gets caught again, it's ten  
20          years' mandatory minimum. Nobody on this Zoom screen  
21          has any discretion over that.

22          THE COURT: Can I interrupt you on that because  
23          I actually had that conversation with Molly beforehand.  
24          But that's true whether he gets a probationary sentence  
25          or if he gets a jail term.

1 MR. McADAMS: I agree. But I think giving him a  
2 jail term will send a much stronger message to him. I  
3 think that we've seen -- Ms. Aitchison has clients -- I  
4 think people like Mr. Andreozzi that recently got  
5 sentenced to ten years by Judge McElroy, you know, were  
6 probably shocked to learn that they were getting ten  
7 years and that there was nothing anyone could do about  
8 it.

9 And I think that if you go to prison for a  
10 period of time, then the deterrent value of being an  
11 inmate in a federal prison maybe makes you take it a  
12 little bit more seriously the next time than being  
13 told, you know, you've got a problem, you've got to go  
14 to your counselor; you have to solve it in the other  
15 ways that are non-incarcerative.

16 I say all that, Judge, with respect in terms of  
17 our disagreement.

18 THE COURT: Actually, we ended it as not  
19 disagreeing particularly, per se.

20 MR. McADAMS: Okay. I have nothing else to say,  
21 your Honor, except that I do think that even though Mr.  
22 Macintyre is represented by the public defender, that  
23 he's still eligible to pay the \$5,000 mandatory special  
24 assessment. That requirement is not coterminous with  
25 eligibility for appointed counsel, and based on the

1 information in the PSR about his financial ability to  
2 pay a fine, I think he ought to pay the \$5,000 special  
3 assessment.

4 THE COURT: John, am I correct that there's been  
5 no claim for restitution in this particular case?

6 MR. McADAMS: That's correct, your Honor,  
7 because we did submit all the images to NCMEC, but none  
8 of the images are known victims to make a restitution  
9 claim.

10 THE COURT: Okay. I just wanted to make sure of  
11 that. Thanks. Great. Thanks, Mr. McAdams.

12 Ms. Aitchison.

13 MS. AITCHISON: Thank you, your Honor.

14 The Court sort of touched on some of the pieces  
15 of my argument, so I'll try to be brief in those areas.

16 THE COURT: You can make it again, and then I  
17 can attack my argument through you when you make it.

18 MS. AITCHISON: Okay. We can go back and forth  
19 a few times too.

20 Your Honor, at this time we're asking that you  
21 sentence Mr. Macintyre to a nonjail sentence. We would  
22 not oppose any particular conditions that you felt were  
23 appropriate including home confinement restrictions of  
24 that nature. I know in my sentencing memorandum I  
25 suggested some community service because I thought it

1       could be helpful. Mr. McAdams alludes to a fine. I  
2       would agree that Mr. Macintyre's financial situation is  
3       different than many of my clients, so I'll leave it to  
4       the Court's discretion and leave it at that.

5               THE COURT: Let me just interrupt you. Mr.  
6       McAdams I don't think was recommending a fine. He was  
7       recommending that I not waive the \$5,000 JVTA.

8               MS. AITCHISON: Oh, sorry, yes. My rationale  
9       still stands, but I appreciate the correction.

10              THE COURT: Sure.

11              MS. AITCHISON: But it's rare I think, your  
12       Honor, that probation is appropriate in child  
13       pornography cases. I strongly submit to you this is  
14       one of those cases.

15              I thought a lot about this case in preparation  
16       for today and about Mr. Macintyre, and here's what I  
17       kept coming back to. So there's a national criminal  
18       defense college that puts on sort of a -- it's like a  
19       trial school litigation academy every year for two  
20       weeks. It used to be in Macon, Georgia, and  
21       interestingly is now in Bristol, Rhode Island.

22              THE COURT: My college and law school roommate  
23       is a faculty member of that.

24              MS. AITCHISON: Okay. So you're familiar with  
25       the school. It's a right of passage for criminal

1 defense lawyers. I went back in 2015.

2 And they sell a lot of items, but one of the  
3 things that I purchased is a T-shirt. And the T-shirt  
4 has the logo from the college on it, but then it says  
5 in big letters, "We Don't Defend Crimes, We Defend  
6 People." And I kept coming back to that T-shirt as I  
7 was thinking about this because I don't know that I can  
8 put it any better than that. I'm not sitting here  
9 saying to you child pornography should equal probation;  
10 what I'm saying to you is that John Macintyre, the  
11 person before you, should get probation, he is  
12 deserving of probation.

13 The government, as they do in a lot of these  
14 cases and I understand why, they like to focus on the  
15 crime, right. Their argument is often very largely  
16 about how terrible child pornography is, but it's not  
17 victimless, right, and then they included a number of  
18 other cases which I'll get to. But I want to be very  
19 clear that no one here is suggesting that child  
20 pornography isn't horrible, and we're certainly not  
21 suggesting it's victimless, but there's a reason that  
22 we don't just shell out the same sentence in every  
23 case, and there's a reason that we have this incredibly  
24 individualized sentencing process in the federal  
25 system. And that's because just like I don't defend

1 crimes, I defend people, you, as the Court, sentence  
2 people, not just crimes.

3 And that's what I think brings us to the  
4 sentencing disparity argument the government made. I  
5 appreciate the fact that the Court raised some of the  
6 arguments that I was going to raise. Here's what I can  
7 say, your Honor. While I suppose, theoretically, in  
8 every case the government could charge receipt based on  
9 the inference that if you possess something, you  
10 receive it, we don't see it, the receipt portion, as  
11 often in this district as we do with distribution. The  
12 receipt cases, at least that I've seen, generally  
13 involve an individual in a chatroom, right, who is  
14 receiving images from someone else. It's a little bit  
15 more to it than sort of just this inference.

16 But what I can tell this Court is that receipt  
17 was never a discussion in this case. There was never a  
18 negotiation in this case where, you know, Mr. Macintyre  
19 agreed to plead guilty in exchange for not charging him  
20 with receipt. That was never part of this; that's why  
21 there's no plea agreement. And so I'm a little  
22 troubled at this idea that the government -- I  
23 appreciate Mr. McAdams saying, you know, that they're  
24 at their word, they wouldn't now charge him, but I want  
25 to be clear, there was never that discussion. So I

1 don't want there to be this implication somehow that  
2 there was a discussed break for Mr. Macintyre.

3 And that leads me to the other cases that the  
4 government referenced. And I know you pointed out  
5 *State vs. Mulvey* which is one of them. I'm not going  
6 to go through each and every single one, but what I can  
7 say is what the Court essentially said; every single  
8 one of them had receipt or distribution attached to it,  
9 whether it was in the complaint and charged and later  
10 dismissed and not indicted or the government put in the  
11 plea agreement that they had evidence of receipt but  
12 were agreeing not to charge it. Some had multiple  
13 counts of distribution. Some, as you brought out with  
14 Mr. Mulvey, had a violation of bail after being  
15 charged. One defendant had a money laundering count  
16 dismissed.

17 And I'll also point out, your Honor, that every  
18 single one of those cases -- because I also looked them  
19 up -- had a plea agreement where there was a joint  
20 recommendation. Every single one of those defendants  
21 had higher guidelines than Mr. Macintyre. They're not  
22 comparable. I did find two cases in this district  
23 where the defendant was charged with just possession.  
24 And when I say "just possession," I mean, there's no  
25 mention anywhere of receipt or distribution. It's not



1 in the complaint. It's not in the plea agreement. I  
2 can't speak to the evidence, but the docket is silent  
3 on that issue.

4 And the defendant appears before the Court  
5 pleading to possession and is sentenced. The first is  
6 *Decredico*, which is 15-CR-36. His guidelines were 78  
7 to 97 months and he received 12 months and a day. The  
8 second is *Donald Sly*, that's 20-CR-44. His guidelines  
9 were 46 to 57 months. He received five years'  
10 probation. Both defendants had higher guidelines than  
11 Mr. Macintyre. So if you look at defendants who are  
12 actually and truly similarly situated to Mr. Macintyre,  
13 our request of probation is reasonable if you look at  
14 that.

15 Your Honor, if you choose to punish Mr.  
16 Macintyre with a jail sentence because of the  
17 seriousness of the crime, we understand that, but the  
18 idea that we penalize him additionally for being open  
19 with law enforcement for admitting that he has a  
20 problem, for wanting help, I ask you to reject that. I  
21 can tell you that oftentimes the government will come  
22 in and argue that this individual hasn't taken  
23 responsibility for what they've done; they've minimized  
24 their conduct, they have misled the agents, right.

25 We have the exact opposite here. We have

1 someone who sat down and just talked to law  
2 enforcement, talked to them about things that they have  
3 no ability to prove in court, right. And I think that  
4 goes hand in hand with Leo Keating's evaluation. Mr.  
5 McAdams --

6 THE COURT: Ms. Aitchison, I am shocked by how  
7 many people charged with child pornography actually as  
8 soon as they're confronted with it spill their guts. I  
9 almost say it's routine in the cases that I've got. I  
10 don't know why. I don't know if it's a psychological  
11 thing like, oh, finally I'm relieved of this deep, dark  
12 secret -- I don't know what it is -- but almost every  
13 case I've seen that I can remember, it's been that  
14 case.

15 MS. AITCHISON: I certainly haven't seen a case  
16 similar to this where there's sort of a disclosure of  
17 kind of this long history of behavior -- I think it's a  
18 little unique -- but, you know, I accept the Court's  
19 representation. But, you know, Mr. McAdams talks  
20 about, okay, these evaluations are problematic because  
21 they rely on what the person tells the evaluator,  
22 right. I think that cuts against their argument  
23 because we here have someone who sat down and said here  
24 is everything I have done and was completely open and  
25 honest about it. And someone with over 20 years of

1 experience -- by the way, Leo Keating's firm is  
2 frequently used by the courts in Massachusetts in the  
3 dangerousness assessments that they have over there.

4 So someone with over 20 years of experience  
5 listened to all of that and prepared the report for you  
6 that you see. And I submitted it even though there are  
7 aspects to it that aren't great, but it's honest and  
8 it's truthful; and to a certain extent, sure, we can't  
9 ever know if someone's a true risk, but if you have  
10 someone who says, okay, I've been looking at images for  
11 ten years and there's never been so much as an  
12 allegation of anything else, I think it's hard to argue  
13 that they're a danger in the sense of proceeding to  
14 sort of hands-on offenses which I think is probably at  
15 the back of everyone's mind in cases like this, right;  
16 we want to make sure that it doesn't kind of escalate,  
17 right, and kind of perpetuate that.

18 We have no evidence he's ever chatted with  
19 anyone, ever tried to meet up with anyone. He's never  
20 sought out any minors. So I think that that cuts  
21 against the government's argument. I think the Court  
22 hit the nail on the head; it's really whether or not  
23 incarceration is necessary. You can always make the  
24 argument that prison supports punishment, of course.  
25 It's generally the most extreme version of punishment

1       that we have, but it's not the only version.

2               And we know that punishment can be accomplished  
3       in all kinds of ways. And in a case like this, we also  
4       have this whole area of profoundly effective collateral  
5       consequences, right. We have someone who is college  
6       educated and a very hard worker, who has worked really  
7       hard to get himself to a place of stability, financial  
8       and otherwise, and build up a life for himself and a  
9       reputation and he's now going to be a sex offender.

10              This is going to make it into the local news,  
11       right. People in his town are all going to know. The  
12       people that he works with are all going to know. The  
13       first job that he had that he had for years fired him  
14       when he was arrested. I don't know that the second job  
15       will keep him on. I hope they do, but they may fire  
16       him. Any job that he applies for in the future, this  
17       will be brought up and he'll have to discuss it. He's  
18       going to have a felony conviction for the rest of his  
19       life.

20              And then there are the consequences down the  
21       road, right. Any time he goes anywhere with his  
22       family, he is going to think about now who is there,  
23       who is going to be there, can I go to the zoo, can I go  
24       wherever. His sister, who he is very close with,  
25       submitted a letter with this court. At some point she

1 may have a family, right. Mr. Macintyre may have to  
2 stay home when the entire family goes to watch her  
3 child at the talent show or the school fair, right. He  
4 may have to sit at home and miss out on those things.  
5 Those are all the little things that we don't think  
6 about necessarily as punishment, but are incredibly  
7 difficult.

8 And I just ask the Court to look at Mr.  
9 Macintyre, look at his life. I don't think we have  
10 someone here who we would characterize as a predator in  
11 the sense that -- and I use that phrase bluntly because  
12 I think the Court has seen individuals who they have  
13 determined to be predators, and I think that that is  
14 not Mr. Macintyre. He was looking at a lot of  
15 pornography, yes, not just child pornography, adult  
16 pornography as well, but it's also a psychological  
17 issue for him; it's an illness.

18 And we know that, and you've brought out this  
19 idea that science tells us there's no cure for it, but  
20 this is someone who freely admits that he has a  
21 problem. He freely admits that he needs help. He's  
22 taken steps to get that help.

23 He's incredibly lucky in that he has family  
24 support behind him who supports him and stands by him  
25 even though they don't really understand, you know, why

1 he sort of has this proclivity. But the idea that we  
2 somehow punish him more because he acknowledged this  
3 because he had this history I think is problematic and  
4 flies in the face of logic. I don't think this Court's  
5 ever going to see Mr. Macintyre again. I think the  
6 Court should have confidence in that given who he is,  
7 given his life that he's led to this point.

8 When we look at rehabilitation, which, you know,  
9 the law tells us we need to look at, he clearly needs  
10 counseling and services and treatment and that's  
11 required by probation, but he also needs it. I don't  
12 think we can honestly sit here and say that he would  
13 get better treatment and rehabilitation at the Bureau  
14 of Prisons than he would in the community. I just  
15 don't think that that's true. I think that when you  
16 look at the idea of deterrence, it's hard.

17 I listened to another sentencing this morning  
18 that the Court had that had to do with the dark web and  
19 the internet, and I always struggle with this idea of  
20 general deterrence, your Honor, because we see in the  
21 statistics that an overwhelming majority of child  
22 pornography defendants get jail. But what I can tell  
23 you is it's still a very large portion of our caseload,  
24 right; we still get these cases day after day after  
25 day.

1           And you know, the internet is a gift and a  
2           curse, right, so I think realistically the idea that  
3           putting Mr. Macintyre in jail is going to somehow stop  
4           the dissemination of that, I just don't think is  
5           practically correct. I understand the argument and I  
6           understand the desire to stop it, believe me I do, but  
7           practically speaking, I don't think it does.

8           What I think can make a difference is actually  
9           looking at the individual, addressing the underlying  
10          issues, getting them help and that makes the  
11          difference. It doesn't make what he did any less  
12          serious, but it accomplishes what the sentencing  
13          factors actually get at, which is how do we put this  
14          person in a different situation, how do we protect  
15          society, how do we punish them, right. And so when we  
16          look at it in that lens, a nonjail sentence is  
17          sufficient but no more than necessary; not in every  
18          case, not for every defendant, but definitely in this  
19          case, your Honor.

20          And I'm asking the Court to look at Mr.  
21          Macintyre as an individual. And I ask the Court to  
22          consider a nonjail sentence with whatever, as I said,  
23          conditions you feel are appropriate. Thank you.

24               THE COURT: Thanks, Ms. Aitchison.

25               Mr. Macintyre, do you want to say anything

1 before I impose sentence?

2 THE DEFENDANT: Yes, I would like to.

3 So, your Honor, one of the core principles, the  
4 center of my life, is accountability matters. I  
5 believe my adherence to accountability is the reason on  
6 the morning of my arrest, I was forthcoming about the  
7 nature of my crime. For an addict such as myself, it's  
8 dangerously easy to minimize, to hide behind the  
9 delusions that actions, when done in secret, don't have  
10 effect on others.

11 However, my actions contributed to a culture of  
12 exploitation. My viewing of child sexual abuse  
13 material was a destructive choice. It was not a choice  
14 made a single time but habitually over an extended  
15 period of time; A choice emboldened by a false notion  
16 that actions taken in secret are divorced from the harm  
17 those actions cause.

18 The first few months after my arrest felt like  
19 the darkest era of my life; however, with the passage  
20 of time and the aid of my therapist, I discovered the  
21 reality of the matter. The truth is, the real darkest  
22 era of my life were those moments the last 15 years  
23 when I viewed child exploitation material, because in  
24 those moments I was victimizing fellow human beings.

25 Through therapy and self-reflection, I've been



1 working on understanding why I was drawn to those  
2 images and videos. The results of my psychosexual  
3 evaluation were enlightening. I now understand that my  
4 previously undiagnosed autism, combined with general  
5 anxiety, contributed towards my being underdeveloped in  
6 certain social skills. In times of stress, I used porn  
7 as an escape, and escalation of my pornography  
8 consumption led me from legal content to illegal  
9 content. And as is the nature of addiction, I ran from  
10 high to high looking for a distraction, but it was an  
11 empty distraction. And more grievously, it was a  
12 distraction that caused exploitation of other people.

13 It's important for me to state clearly, though,  
14 that my autism, depression and anxiety, while  
15 contributing factors, are not an excuse for my crime.  
16 Hundreds of thousands of people are on the autistic  
17 spectrum. Millions of people have anxiety or  
18 depression, but only a percentage of those commit  
19 crimes. I am among that percentage.

20 The choice to view child exploitation material  
21 was my own. The choice to put off getting treatment  
22 for my porn addiction was my own. I made those  
23 choices, and I own the ramifications of those choices.

24 As I actively seek to correct my behavior, I'm  
25 profoundly thankful my support system extends beyond

1 just my therapist. I have the support of my mother and  
2 father and sister. They have always stood by me and  
3 their support is unwavering. But more importantly,  
4 they hold me accountable. In those moments of weakness  
5 when my addict mindset tries to minimize or justify  
6 destructive behavior, they unflinchingly give me  
7 perspective. They hold me to a high standard.

8 I believe very deeply in the importance of being  
9 a hard worker. While I admittedly neglected aspects of  
10 my personal life, employment has remained a constant  
11 because each day should be filled with actions of  
12 value. As I continue to use therapy to address my  
13 social issues, I look forward to transferring my hard  
14 work ethic to other aspects of my life.

15 I come before you ready for my sentence,  
16 whatever form it takes, because I understand criminal  
17 action needs to be addressed. What matters above all  
18 else is I never again create victims. I wish to leave  
19 a positive imprint on the world, and that mission will  
20 remain the center of every action I take going forward  
21 in life.

22 THE COURT: Thanks, Mr. Macintyre.

23 It's probably hard for you to sit here when Mr.  
24 McAdams, Ms. Aitchison and I and Ms. Picozzi from  
25 probation all have history and experience and could

1 fill in each other's sentences oftentimes, because I'm  
2 sure you know, you're not the first and, sadly, you  
3 won't be the last that comes before us with this crime.

4 And there's two overriding things  
5 that -- Congress tells us we have to look at -- and I  
6 do do what Congress tells me I have to do. They tell  
7 us we have to look at various aspects of why we  
8 sentence people, and we have to try and factor them all  
9 in. We call them 3553 factors, but they are as they  
10 say to a court, you have to sentence people to punish  
11 the crime, you have to sentence people to deter them,  
12 make sure they don't do it again. You have to sentence  
13 people to deter others, you have to sentence people in  
14 order to assist with their rehabilitation, you have to  
15 sentence people to show the respect for the law. And  
16 then when you do all that, you have to find a sentence  
17 that's enough to do all those things, but not more than  
18 necessary to do all those things.

19 So in every case, what makes every case unique,  
20 aren't always the facts but -- well, they are the  
21 facts, but they are the facts as to which of those five  
22 or six reasons that Congress tells us to consider mean  
23 more to us. And I think you probably picked up from my  
24 conversation with Mr. McAdams that in your instance  
25 when I look at the 3553 factors, the one that really

1 strikes me -- or it's actually two because they're kind  
2 of the same thing, which is punishment and respect for  
3 the law, that those are the ones that stand out for me  
4 given your background and history.

5 I don't believe for someone like you that jail  
6 is the only way to deter you. And I don't believe what  
7 I give you today has any sort of deterrent effect on  
8 others. But I do believe that my sentence has to  
9 punish you, and I do believe that my sentence has to  
10 show you that there's accountability for breaking the  
11 law. And I obviously agree with all the attorneys that  
12 this is not a victimless crime. You may be far down  
13 the ladder of closeness to the evil, but it's no less  
14 evil, and it's a no less horrible part of the ladder.

15 And then the other thing that it's actually not  
16 in 3553, I don't think, but that we do have to  
17 consider, is what Mr. McAdams says which is disparities  
18 within -- maybe it is in there, I don't know -- it's  
19 somewhere in a statute somewhere that tells us we have  
20 to consider disparities. And I've sentenced less  
21 people than Ms. Aitchison has represented or less  
22 people than Mr. McAdams has prosecuted charged with  
23 child pornography -- I've probably sentenced 30, 40,  
24 I'm guessing, over my 10, 11 years -- and I think all  
25 but two have gone to jail is my -- I haven't studied

1 this, but that's off the top of my head.

2 And in each one of those cases, there was a  
3 unique aspect -- each one of the cases of nonjail,  
4 there was a unique aspect to them that caused me to  
5 determine that there were alternative ways to  
6 accomplish the sentencing goals without jail. One was  
7 an 18 year old -- another Bishop Hendricken graduate,  
8 as a matter of fact, as am I.

9 You're LaSalle, aren't you, Mr. McAdams?

10 MR. McADAMS: Your Honor, I'm from  
11 Massachusetts. I'm Archbishop Williams.

12 THE COURT: Oh, no, forget it.

13 I can't remember his name, sadly, right now, but  
14 there was one in particular early on that was that.  
15 And I don't remember what the other one was; I just  
16 remember someone telling me it was one other time.

17 And the truth is, when I focus on punishment and  
18 I focus on respect for the law, your lawyer has  
19 convinced me that you will be punished without a jail  
20 sentence. This is one of those rare and unusual cases  
21 where the Court does not need to send you to jail in  
22 order to punish you or to accomplish respect for the  
23 law or any of the 3553 factors. It's very unusual, but  
24 yours is that unusual case; both after reading --  
25 understanding it came from the defendant, but reading

1 the psychological report that came and the undiagnosed  
2 autism spectrum disorder.

3 Your argument by the attorney -- I don't know  
4 why she chose August Wilson, I don't know that I've  
5 ever told anyone that August Wilson is my favorite  
6 playwright, who I've actually taken whole classes  
7 about, but somehow she was going to win me over when  
8 she began with the August Wilson quote. But seriously,  
9 the effect of a felony on someone like you, felony  
10 conviction, particularly a sexual offender conviction,  
11 will punish you severely. I don't need to repeat  
12 everything your lawyer said because she did the best  
13 job I've heard about the punishing effect that this  
14 will have on someone like you. And your statement  
15 today actually, and what I've read about you in the  
16 PSR, shows me that you understand accountability and  
17 respect for the law as a meaningful aspect. And  
18 because it is statutorily allowed and called for. The  
19 Court's going to impose a period of five years of  
20 probation.

21 Do I have that right, Ms. Picozzi?

22 PROBATION OFFICER: Yes, your Honor. You can  
23 impose up to five years of probation.

24 THE COURT: Okay. That's what I thought.  
25 Thanks, I appreciate that.

1           The Court's going to impose a period of five  
2       years of probation. A fine, per se, is not  
3       appropriate; however, the Court will impose the \$100  
4       mandatory assessment and the 5,000 JVTA payment. But  
5       because of your representation by the public defender  
6       and your financial condition, the Court finds that you  
7       are not responsible for the AVAA 17,000. But the Court  
8       will impose the \$5100 special assessment.

9           And Mr. Macintyre, in addition to the standard  
10      conditions of supervised release, you shall participate  
11      in a program of mental health treatment and sex  
12      offender specific treatment, both as directed and  
13      approved by probation. You shall participate in  
14      testing in the form of polygraphs or other methodology  
15      approved by the Court to measure compliance with  
16      supervision or treatment. You shall contribute to the  
17      cost of all such treatment and testing based on your  
18      ability to pay as determined by probation.

19          You shall comply with all applicable federal and  
20      state laws regarding registration of sex offenders in  
21      the state of residence, employment and school  
22      attendance and shall provide verification of compliance  
23      with this requirement to probation. You shall permit  
24      probation, who may be accompanied by local, state or  
25      federal law enforcement authorities, upon reasonable

1 suspicion of a violation of supervision, to conduct a  
2 search of your residence, automobile, workplace,  
3 computer or other electronic communication data device  
4 or media.

5 You must not use, possess, procure or otherwise  
6 obtain any electronic device that can be linked to any  
7 computer networks, bulletin boards, internet service  
8 providers or exchange formats involving computers  
9 unless preapproved by probation. You must submit to  
10 unannounced examinations of your computer or other  
11 electronic equipment by probation, who may be  
12 accompanied by either local, state or federal law  
13 enforcement authorities, which may include retrieval  
14 and copying of all data from the computer to ensure  
15 compliance with this condition.

16 In addition, you must consent to the removal of  
17 such equipment for the purpose of conducting a more  
18 thorough investigation and must allow, at the direction  
19 of probation, installation on your computer or other  
20 electronic equipment any hardware or software system to  
21 monitor your computer use.

22 You shall have no contact with any child under  
23 the age of 18 without the presence of an adult who is  
24 aware of your criminal history and is approved in  
25 advance by probation. You shall not loiter in areas



1 where children congregate. These include, but are not  
2 limited to, schools, daycare centers, playgrounds,  
3 arcades, amusement parks, recreation parks and youth  
4 sporting events.

5 You shall not be employed in any occupation,  
6 business or profession, or participate in any volunteer  
7 activity where there is access to children under the  
8 age of 18, unless authorized in advance by probation.  
9 And you shall live in a residence approved by probation  
10 and not reside with anyone under the age of 18 unless  
11 approved in advance by probation.

12 Ms. Picozzi, have I left anything out from  
13 probation's perspective?

14 PROBATION OFFICER: No, your Honor.

15 THE COURT: Great. Anything further for the  
16 government?

17 MR. McADAMS: No, your Honor, thank you.

18 THE COURT: Ms. Aitchison, anything further for  
19 Mr. Macintyre?

20 MS. AITCHISON: No, thank you, your Honor.

21 THE COURT: Mr. Macintyre, I think -- Ms.  
22 Picozzi, will someone from probation be in touch with  
23 Mr. Macintyre?

24 PROBATION OFFICER: Yes. Brandon Miles will be  
25 contacting you later today to set up reporting

1 instructions.

2 THE DEFENDANT: Okay.

3 THE COURT: Thank you all. I appreciate it.

4 We'll stand adjourned.

5 (Time noted; 3:08 p.m.)

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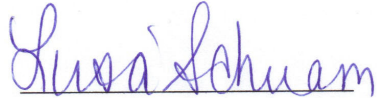
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

A handwritten signature in blue ink, appearing to read "Lisa Schum".

Official Court Reporter

November 22, 2022